

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON FISH AND GAME

Call to Order: By **CHAIRMAN MIKE SPRAGUE**, on February 18, 2003 at 3:00 P.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Mike Sprague, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Keith Bales (R)
Sen. Gregory D. Barkus (R)
Sen. Ken (Kim) Hansen (D)
Sen. Dale Mahlum (R)
Sen. Debbie Shea (D)
Sen. Bill Tash (R)
Sen. Joseph (Joe) Tropila (D)

Members Excused: Sen. Trudi Schmidt (D)

Members Absent: None.

Staff Present: Jane Hayden, Committee Secretary
Mary Vandenbosch, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: **SB 208, 2/18/2003**
Executive Action: **SB 208, INDEFINITELY POSTPONED**

HEARING ON SB 208

Sponsor: **SENATOR SAM KITZENBERG**

Proponents: **Glen Meier, Sheriff, Valley County**

Opponents: **None.**

Informational: **Jim Croft, Department of Fish, Wildlife, and Parks (FWP)**

Opening Statement by Sponsor:**EXHIBIT (fis36c01)**

SENATOR SAM KITZENBERG read from a letter sent to him from **Glen Meier, Sheriff, Valley County**, that explains the importance of the safety and welfare of the many visitors to Montana who will come during the Lewis and Clark Bicentennial Celebration. The letter addresses the safety issues of those that will use the Missouri River, especially the area between Coal Banks Landing and the Fort Peck Dam.

SENATOR KITZENBERG stated that there are some economic reasons behind SB 208. When somebody drowns without a life preserver, sometimes it takes two to three weeks to search for and find bodies of drowning victims. This is costly and Valley County has a limited budget at best. In anticipation of these possibilities, **Sheriff Meier** has designed a program that would ensure that if a person is wearing a life preserver, their life would be saved and if a person did drown, their body could be more easily retrieved without causing Valley County financial hardship. This is the essence of SB 208.

Proponents' Testimony: None given.

Opponents' Testimony: None given.

Informational Testimony: None given.

Questions from Committee Members and Responses:

____ **SENATOR MIKE SPRAGUE** asked **SENATOR KITZENBERG** if there would be signs and notification given to the vacationers. **SENATOR KITZENBERG** answered that there would be signs posted near the points where the life preservers would be required. Pamphlets would be distributed to raise awareness of the safety issues, too.

SENATOR GREG BARKUS asked **SENATOR KITZENBERG** would someone floating in an inner tube have to wear a life jacket. **SENATOR KITZENBERG** answered in the affirmative. **SENATOR BARKUS** asked **SENATOR KITZENBERG** what stretch of the Missouri River would be involved in SB 208. **SENATOR KITZENBERG** explained that the stretch is detailed on Page 3, Line 9, Section 6(b) of SB 208.

SENATOR BARKUS asked **SENATOR KITZENBERG** if somebody swimming in Fort Peck Lake on an inner tube would be required to wear

a life jacket. **SENATOR KITZENBERG** responded that he did not believe so, as SB 208 is specific enough in its intent that it would exclude that.

SENATOR GREG BARKUS asked **Jim Croft, Law Enforcement Chief, Department of Fish, Wildlife, and Parks**, whether under SB 208, inner tubes would be considered vessels. **Mr. Croft** answered that inner tubes were not considered vessels, and therefore, life jackets are not required when using them. **SENATOR BARKUS** asked **Jim Croft** what kinds of vessels are covered by SB 208. **Mr. Croft** explained that vessels are defined by the U.S. Coast Guard as a means of transportation, so it would be anything with a motor or a rolling form that could go from Point A to Point B. Obviously, on a river it could be a raft, but rafts are not considered vessels as defined by the U.S. Coast Guard.

SENATOR GREG BARKUS asked **Jim Croft** if he was familiar with the Middle Fork of the Flathead River, and does state law mandate that when floating that stretch of river, people must wear life jackets. **Mr. Croft** responded, "not to my knowledge," but the standard under state law is that children under the age of 12 must have a life jacket on at all times when a vessel is in motion. Adults need to have life jackets at their immediate disposal in any vessel, but do not have to wear them.

SENATOR KEN HANSEN asked **SENATOR SAM KITZENBERG** about Section 1(c) on Page 2, Lines 7 and 8, of SB 208--why do "fixed" fire extinguishers replace "approved" fire extinguishers as a requirement of the bill. **SENATOR DAN MCGEE** explained for **SENATOR KITZENBERG** that it is just cleanup language that was taken from Line 8 and put on Line 7.

SENATOR MIKE SPRAGUE asked **Jim Croft, FWP**, if FWP already has the authority to require what SB 208 is suggesting. **Mr. Croft** answered yes, FWP does have the authority to require it now as explained on Page 3, Lines 6(a) and 15. **SENATOR SPRAGUE** asked **Jim Croft** if FWP is going to do preventive awareness for those unfamiliar with the dangers of floating on Montana's rivers and streams. **Mr. Croft** responded that FWP will be doing a substantial public education effort regarding some of the waters in Montana. One of the primary problems, especially in the Spring, is not that the water is necessarily a danger itself, but that the water is so cold that most people drown because of the onset of hypothermia.

SENATOR SPRAGUE asked **Jim Croft** if SB 208 is even needed, or does FWP already have the authority to do what needs to be done to protect people from themselves, now. **Mr. Croft** answered that FWP has the authority, but FWP has not discussed a policy

like this concerning certain sections of rivers and bodies of water. It is true that people coming here will be relatively unprepared in terms of safety on Montana's waterways.

SENATOR DALE MAHLUM asked **SENATOR SAM KITZENBERG** about Page 3, Line 10, which states the effective termination dates for SB 208. If this is such a great idea, why does it have a termination date. **SENATOR KITZENBERG** said that it is a great idea, but there are some people who think this is an infringement on personal rights. The definition is too broad for continuous application. **Sheriff Glen Meier** is a sensible man, and realized that some of the responsibility was going to be his. He is part of the search and rescue operations in Valley County and knows how expensive they are. If SB 208 is passed, it will ease **Sheriff Meier's** conscience.

SENATOR JOE TROPILA asked **SENATOR KITZENBERG** whether the Valley County Sheriff or FWP would be in charge, if SB 208 goes into effect. **SENATOR KITZENBERG** asked **Jim Croft** to answer the question. **Mr. Croft** stated that presently, FWP is in charge of the safe boating programs, however, any peace officer in Montana can effectively do this.

SENATOR MIKE SPRAGUE asked **Jim Croft** what entity pays for search and rescue costs. **Mr. Croft** said those costs are the county sheriff's responsibility.

Closing by Sponsor:

SENATOR SAM KITZENBERG testified that we need to pay attention to the last line in **Sheriff Meier's** letter that reads, "Lastly, I want all visitors to Montana and Valley County to leave alive and well, with only fond memories of our State."

EXECUTIVE ACTION ON SB 208

{Tape: 2; Side: A; Comments: ALL EXECUTIVE ACTION ON the end of SB 250's Executive Action and all of SB 208's Executive Action, Tape 2 is filed with SB 208}

Motion: **SENATOR DEBBIE SHEA** moved that SB 208 DO PASS.

Mary Vandebosch cautioned that Page 3, Lines 7 and 8, may be unconstitutional because the Montana Constitution prohibits special legislation when general legislation would accomplish the purpose. The law already allows FWP to require life preservers under certain conditions. **Ms. Vandebosch** stated that she could

not tell the Committee what a court would decide, but wanted to make the Committee aware of this possibility.

Motion: SENATOR GREG BARKUS made a substitute motion on SB 208 to be INDEFINITELY POSTPONED.

SENATOR DEBBIE SHEA stated that while most Montanans are familiar with water safety, many tourists will not be, and what harm would it do to pass SB 208 and help Valley County and save some lives.

SENATOR MIKE SPRAGUE asked Chris Smith, FWP, to give an example of how FWP could post signs without passing SB 208 because of the possibility of its being unconstitutional. Mr. Smith stated that the Committee could write a letter to FWP explaining the intent behind SB 208, and asking the Department to work with the affected parties during the interim to do their best to implement the intent behind the bill without legislative action. The FWP Commission has the authority to direct these things to be done.

SENATOR DEBBIE SHEA asked Chris Smith if there would be a greater fiscal impact to Valley County, if these things were done by FWP instead of legislated. Mr. Smith responded that the only expense to Valley County would be for the Sheriff to make a trip to Helena to attend an FWP Commission meeting to present the concept.

SENATOR KEITH BALES stated that SB 208 should be Indefinitely Postponed and the Senate Fish and Game Committee should write a letter to the Department of Fish, Wildlife, and Parks. The letter should urge FWP to look at all the rivers that might be used during the Lewis and Clark Bicentennial and have FWP establish information, rules, and pamphlets for all the areas of concern.

SENATOR MIKE SPRAGUE appointed a subcommittee consisting of SENATORS BALES, BARKUS and SHEA (SENATOR SHEA being the chairperson) to draft a letter to FWP. The drafted letter was completed and sent to FWP on March 11, 2003. A copy of this letter is included and labeled as Exhibit 2.

EXHIBIT(fis36c02)

Motion/Vote: SENATOR GREG BARKUS moved that SB 208 BE INDEFINITELY POSTPONED. Motion carried 10-0.

ADJOURNMENT

Adjournment: 5:25 P.M.

SEN. MIKE SPRAGUE, Chairman

JANE M. HAYDEN, Secretary

MS/JMH

EXHIBIT (fis36cad)